Analysis of the State Record

The State Record*

Prior to the commencement of trial defense counsel moved on May 10, 1962 to suppress evidence allegedly seized from the defendant's apartment in Jamaica (89, 96, 98) or in the home of defendant's sister in Hempstead (96, 98, 124-126).

The District Attorney advised the Court and counsel that the People did not intend to offer in evidence on their direct case any items found in the defendant's home in Jamaica (125).

Voir Dire

Deputy Chief Inspector John Lada of the Nassau County Police Department testified that on August 24, 1961 at 4:15 P.M. he arrested the defendant in a bedroom in his sister's home in Hempstead (144-45). Immediately prior to the arrest he had been told by police headquarters "that Lieutenant Kleszak who was in the city [Jamaica] checking Stovall's room had found a shirt bearing the same laundry mark that was on the shirt that was found at the scene and I was also told that a key that was found at the scene belonged to a locker at Abraham and Straus store where Stovall had worked" (147). In the morning of the day of Stovall's arrest the police had received information that Stovall had been seen wearing a white jacket which was believed to belong to the homicide victim (149).

Upon arriving at the home of Shirley Stovall Brown he knocked at the door and asked "where Teddy Stovall was" (145). He was admitted by the sister who took the officer upstairs to a bedroom and pointed to the defendant lying on a cot (146). Captain Hynes, who was with Inspector Lada, asked Mrs. Brown where Stovall's clothing was and

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* References are to folios of the Record on Appeal to the Court of Appeals, New York.

she pointed out some clothes in the closet and gave them to Captain Hynes (150). A white jacket, taken by Captain Hynes, was marked People's Exhibit 1 and was identified by Inspector Lada (153-156).

On cross-examination Lada testified that there were four officers with him when he went to the Hempstead house, but only three went inside (156-157). They also removed a pair of trousers and a hat from Stovall's room (159) and the defendant had his shoes on while asleep on the cot.

Captain William Hynes of the Nassau Police testified that in the afternoon of August 24th he was advised by telephone that the shirt found at the scene of the crime bore the same laundry mark as shirts found in Stovall's Jamaica apartment by another team of officers (171).

Also a key which had been found at the scene of the crime had a number on it which corresponded with the number of the defendant's locker at Abraham and Straus (171-172). Also it had been told the police that the defendant had been seen wearing a white "professional jacket" in a bar near the scene of the homicide and told the bartender that he obtained the jacket from a dead man (173). Hynes identified the jacket (Exh. 1) and also identified the trousers and hat taken at the time of Stovall's arrest, which were marked as Exhibits 2 and 3 (176-177).

The Court "overruled" defendant's objections to Exhibits 1, 2 and 3 (197).

Case in Chief

Lieutenant Edwin Hausser of the Garden City Police testified that in response to a telephone call he and Patrolman Matwiow went to the home of Dr. Paul Behrendt at the corner of Clinton and Pine in Garden City. They arrived at about 12:55 A.M. on August 24, 1961 (263-265). Finding the doors locked, they broke in (265-267). They saw a body, later identified as Dr. Behrendt, lying on the floor of the kitchen (268). They heard sounds from upstairs and upon investigating found Mrs. Behrendt covered with blood and sitting on a bed (269). Hausser described the state of

disarray of the kitchen including that a refrigerator had been toppled over and was lying on its side.

Dr. Joseph E. Foehr testified that he examined Dr. Behrendt at about 1:00 A.M. on August 24th and pronounced him dead (380). He could give no opinion as to the time of death (395). He also examined Mrs. Behrendt who was semi-conscious and in a state of shock (382-83).

Helen Sims testified that she was employed by the telephone answering service to which Dr. Behrendt subscribed. At 12:45 A.M. she received a call on the Doctor's line, but did nothing. She then received a second call on the line and in response to this she called the Doctor's home and after speaking with Mrs. Behrendt, she called the police at approximately 1:00 A.M.

Detective Fred Catapano testified that he arrived at Dr. Behrendt's house at about 2:00 A.M. on August 24th (515). Upon entering the kitchen he saw the deceased lying on the floor and the kitchen in "shambles" with the refrigerator turned over (517).

At about 5:30 A.M. he returned to the kitchen after the refrigerator had been stood upright, and noticed a torn bloodied shirt on the floor in the same location as where the refrigator had previously been lying (518). Inside the shirt pocket was a key chain with three keys on the chain (518-19). The shirt bore a laundry mark "R 2264" (523) and the keys had markings "358" and "EA27" (524). He turned the shirt and keys over to Detectives Stalter and Rofheart (525).

John R. Randall testified that he was an assistant personnel director at Abraham and Straus (560) and that the Company's records showed that Stovall was an employee on August 23, 1961 (561) and that he was assigned locker number 358 (362).

Arievenia Paschal testified that she had known Stovall for three or four months prior to August 1961 and had taken the defendant's shirts to a Chinese laundry on Sutphin Boulevard, about five blocks from the house where they both lived (638-39).

Go Yee testified through a Chinese interpreter that he operated a laundry on Sutphin Boulevard, Jamaica, in August 1961. He was able to identify as his the marks on the shirt found by Detective Catapano but could not identify the person to whom the shirt belonged (665).

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Further colloquy was had between counsel and the Court concerning the defense attempt to obtain a voir dire on the extent to which information obtained during the Jamaica search led to Go Yee and identification of the defendant. During this colloquy the Court announced its position:

> The Court: Well, I passed yesterday on the principle that the Mapp case does not go as far as defense counsel contended, that any effects that might flow from illegally-seized items would bar evidence thereafter. Now I have decided that — (201)

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> Ada Spitzer: May I clarify my position. When we discussed this in chambers I said that I would look into it but I also stated as I have said here before that in my opinion the poison fruit doctrine does not apply as far as any cases are concerned in the State of New York.
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> Mr. Castellano: And your Honor agreed with him on that point.
>
> The Court: I agreed with him.
>
> Mr. Spitzer: Now when your Honor reserved decision in chambers and then came out and announced your decision, I assumed that you took the position that the poison fruit doctrine had no application in the State of New York.
>
> The Court: I did.
>
> Mr. Spitzer: Thereafter it was immaterial to check this matter any further to see whether or not the leads so called were obtained from this apparent or alleged illegal search

The Court: Yes, that is exactly the position that I have taken. (716-717)

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The Court: The court's position is that the doctrine of the illegal fruit arising out of the illegal search and seizure does not apply to the state courts. I have been unable to find any law that says it does, and under the circumstances I am going to deny your motion and you have it on the record (723-724)

(Trial Resumed)

Dr. E. T. Montgomery testified that he treated Mrs. Behrendt in the emergency room at Nassau Hospital. She was in shock, but conscious, and bleeding from multiple wounds (734). She had seven lacerations or punctures in various parts of her body (735 et seq.). The wounds could have been made with a knife or similar sharp instrument (743, 755-56).

On cross-examination Dr. Montgomery testified that Mrs. Behrendt received a total of eleven wounds or lacerations (2613-14) only two of which he would classify as severe. Mrs. Behrendt was of type A blood (2671).

Patrolman Lewis Gebhardt testified that he found an umbrella (Exh. 24, Ident.) about one block from Dr. Behrendt's house at about 6:55 A.M. on August 24th (761, 764).

Detective Boyden Stalter testified that he arrived at the Behrendt home at about 1:15 A.M. During the course of the early morning he saw Detective Catapano hand the shirt and keys to Detective Rofheart (795-96). He received the umbrella from Gebhardt (789-90) and saw a knife handle with a broken blade lying on the dining room table (799) and the remainder of the blade lying in a pool of blood in the kitchen floor (799). (Exh. 22, Ident.)

Stalter questioned the defendant at police headquarters in Mineola in the late afternoon of August 24th. The defendant admitted that the umbrella and keys were his (815).

Over objection* Stalter testified that two days later he and other officers went to the defendant's home in Jamaica and fitted the keys in the front and rear doors (817); they then went to Abraham and Straus and fitted key number 358 into the lock of Locker #358 (819).

Over constitutional objection (823-24) photographs showing the three keys inserted in the respective locks were received in evidence (823-828).

At the time Stalter questioned the defendant concerning the umbrella, the defendant had been in the police station for about two and one-half hours (924). Stalter saw no bruises on the defendant when he first saw him at 4:15 P.M. in front of Dr. Behrendt's home (927) and went with him to police headquarters in Mineola. Stalter was not sure whether Stovall was questioned for less than fifteen minutes or more than five hours in the evening of August 24th (939-942, 948).

During the course of the interrogation of the defendant his shirt was removed (981). Stalter was present intermittently during the interrogation by Inspector Lada and Lieutenant Tuthill but did not recall any of the questions or answers.

On cross-examination Stalter testified that the defendant was arraigned in the morning of August 25th and was then brought back to police headquarters (1139). In the afternoon of August 25th Stalter and two other officers took the defendant in handcuffs to Mrs. Behrendt's room at Nassau Hospital. Present in Mrs. Behrendt's room at the hospital were Chief of Detectives Pinnell, Chief Farrell, District Attorney Cahn and another Assistant District Attorney (1153). The defendant was the only Negro in the room (1155).

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* Mr. Castellano: I object to this testimony on the ground previously stated for the record and along the same lines as I discussed with your Honor before the jury came in.

The Court: Your objection is overruled. Exception will be noted. (818).

Dolores Ramos a route salesman for Professional Linen Service identified a white jacket (Exh. 30, Ident.) as having been supplied to Dr. Behrendt (1260-1264).

Captain William Hynes of the Nassau County Police Department testified that he was present when the defendant was arrested at about 4:00 P.M. on August 24th and that Stovall's sister, Shirley, led Hynes to the closet where certain garments were found (1269-1272). Hynes identified Exhibit 30, for Identification, as one of the garments seized (1282). Captain Hynes identified a pair of trousers and a hat seized at the time of defendant's arrest, Exhibits 31 and 35, Identification (1362-63) which he turned over to Detective Rieder of the Technical Research Bureau (1368).

At the time of Stovall's arrest he was wearing a white shirt and a pair of gray trousers; he was not then wearing shoes or socks (1375). The room in which the arrest took place was "a very small room" with a closet and was a part of the apartment of Shirley Stovall Brown which took up the upper floor of the two family house (1377). Hynes testified that the trousers (Exh. 31) were lying on the floor near the closet when they entered (1378) and that the hat (Exh. 35) was on top of a chest or a trunk (1379). The white jacket (Exh. 30) was inside the closet, the door of which was closed when they entered the room (1379). Shirley Stovall Brown went to the closet and brought out the white jacket in response to Hynes' asking her what Stovall had worn the night before (1380-81).

Stovall wore the hat to the police station but Hynes took it away from him after they arrived (1385-86).

Captain Hynes saw Stovall being interrogated by Inspector Lada and Lieutenant Tuthill in the former's office but could not hear what was said (1387-1392). He saw no marks or bruises on the prisoner (1393).

Hynes saw the prisoner again at about 9:00 P.M. and offered him a sandwich (1404). He saw the prisoner again at about midnight while he was waiting for a doctor (1403). The doctor who came around midnight was a psychiatrist

(1413). The psychiatrist, Dr. D'Angelo, examined the prisoner in Chief Farrell's room (1416).

Jose Diaz, a driver for Professional Linen Service, identified Exhibit 30 for Identification as having been delivered to Dr. Behrendt's house (1422-27).

Deputy Chief Inspector Vincent Thornton testified that he commanded the Identification Bureau of the Nassau County Police and supervised various technical aspects of the investigation. No identifiable fingerprints, other than those of Mrs. Behrendt, were found at the scene (1439). He was present at 5:30 A.M. on August 24th when the toppled refrigerator was righted and saw Detective Catapano find the torn shirt and keys (1446-47).

Leslie Lukash testified that he was a pathologist and Chief Medical Examiner of Nassau County. He performed the autopsy on the body of Dr. Behrendt (1558). In addition to minor abrasions the deceased received two major wounds: one, four inches long and one one-half inches wide at skin level (1561, 1565-66) and extending six to six and one-half inches in depth. This wound severed the heart, diaphragm and stomach and lacerated the upper portions of the liver (1561-62, 1566) and cut through three ribs (1561, 1567-68). The second wound entered over the left clavicle, crossed downward through the breastplate, extending for approximately six inches and lacerated the right lung (1560-61, 1569-70).

Either wound could have produced death (1564).

During the autopsy a fragment of cloth shirting (Exh. 40, Ident.) was found lodged in the crook of the armpit of the deceased and was turned over to the Technical Research Bureau (1573-74).

Detective Robert Rofheart testified that he arrived at Dr. Behrendt's house at 2:02 A.M. on August 24th (1704). He found that a twenty by thirty inch panel was cut out of the screen door leading from the porch to the kitchen (1722-23).

At about five a.m. he received Exhibit 17 (key chain with three keys) from Detective Catapano (1705). Between

seven and eight p.m. Rofheart spoke to the defendant in the homicide office concerning the keys and the prisoner admitted they were his but stated that he did not know "how they got there." (1707) He told Rofheart that he was at his sister's house in Hempstead during the evening of August 23rd (1707). Rofheart asked:

> "Well do you want to give me a statement to that effect and just what your activities were?" (1707)

Rofheart testified that Stovall "refused to give me a statement of any kind" (1708). Objection was taken and the jury was instructed to disregard the words: he refused to give me a statement (1709).

On August 26th Rofheart and Stalter went to the defendant's home in Jamaica and fitted two of the keys in Exhibit 17 in the front door lock and the lock of the rear door leading to the basement apartment (1715-16) and took photographs of the keys in the locks (Exhibits 25 and 26). They then went to Abraham and Straus and inserted the key bearing the number 358 in the locker with the corresponding number (1717-1720). Objection was taken to this testimony and overruled.*

On cross-examination Detective Rofheart testified that the defendant was brought to police headquarters between four and five p.m. on August 24th (1749) and was taken to Inspector Lada's office where he was interrogated (1751).

Rofheart saw no marks about the defendant's face or body at any time (1753-1755)—"not even when we took [Stovall's] clothes from him and put him in county clothes" (1756). The clothes were taken from him by "The lab men" who "stripped him right down" (1770-71). The police

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* Mr. Castellano: * * * I wish to enter my objection to the introduction of this testimony based on a previous objection with regard to the illegal search and seizure * * * I maintain that under the theory that I made the previous objection which I agree your Honor did not sustain, I make the continuing objection * * * (1712-13).

needed the clothes Stovall was wearing in order that they might be processed (1812).

After the prisoner admitted that the umbrella and keys were his, he said "I'll not tell you anything" (1763).

Rofheart was present the next day when Stovall was brought to the hospital. Present there were Chief Pinnell, Chief Farrell, Lada, District Attorney Cahn, Assistant District Attorney Delin and Detective Stalter (1791). Stovall was handcuffed to Stalter (1792). The two detectives waited outside Mrs. Behrendt's room with the prisoner while the others went in the patient's room to speak to her (1794). Some few minutes later the detectives took Stovall into Mrs. Behrendt's room (1798) where she identified the defendant as "the man . . . [who] struck my husband down and cut me" (1803). Chief Pinnell told the prisoner to "say these words" (1805) for voice identification (1803).

Detective Rofheart was present when Dr. D'Angelo, the psychiatrist, examined the prisoner (1813).

Charlie Rice testified that he was the landlord of 111-10 145th Street in Jamaica. Stovall rented "the whole complete basement" and was given keys to the front door and the rear cellar door of the basement (1866).

On August 24th officers came to the house. They went down to Stovall's room and took a shirt (1876, 1887-1892). Officers came back two days later and again searched Stovall's apartment, removing a diary and another shirt (1876, 1893).

Stovall had never given Rice permission to let the police officers into his apartment (1875) and Rice did not give the officers permission to insert keys in the locks to the front and rear basement doors (1882).

Rozier Brown testified that he lived at 85 Wellington Street in Hempstead. Shirley Stovall, to whom he was engaged on August 23, 1961, also lived in the building.

The defendant came in at about 9:00 P.M. (1943) on August 23 and Brown and the defendant sat together and talked until about 10:30 or 10:45 P.M. (1913-1914). They drank a pint of brandy together (1913).

Stovall left at about 10:45 P.M. to get a train back to Jamaica (1915). When he left he was wearing a white long sleeved shirt (1917), black pants (1921), hat and shoes (1917). He was also carrying an umbrella (1917-18).

He returned at approximately 1:00 P.M. (1919) and was wearing a white jacket, "like doctors [or] cooks wear" (1920). He was wearing no shirt or undershirt under the jacket (1928). His trousers appeared to have blood on them (1922).

Rozier Brown and Shirley asked the defendant what had happened.

"So he started telling us about—he says, 'You won't believe this. It was the worstest dream I ever had in my life.'

"He started talking about a dream so we asked him what happened. And he said he went to the train station and—let's see—he started to the train station, I think, and he saw a man or met a man or something. Anyway, the next thing you know, he was in the train station and he was on a train, and he said it seemed like the train disappeared and then he was in a car or something, he was in a car, and the car stopped, and everything—it was all confusing—couldn't make no sense out of it first. So I told him, 'Look if you lay down maybe tomorrow morning when you wake up you can tell us what happened.'

"The next morning he woke up it was the same thing again. So he said he thought he heard—he was walking down the street and he thought he heard a woman holler, a woman screaming, and the way he was talking, you know, you could tell it sounded like it was all confusion you couldn't make heads or tails of what he was saying at first. And then he said something like he heard a woman screaming and he said he ran in this house and there was a man laying there in a pool of blood. And so we said, 'A man in a pool of blood?'

He said, 'Yeah, I never seen so much blood.' And then a lady was screaming and hollering. He said she said something to him and he said he told her, 'Lady, you can't hurt me. I'm here to help you. The Lord won't let you hurt me.

"Q. The who? A. 'The Lord won't let me hurt you. I'm here to help you. And that's all he remembered until he was home. That's as much as he said. (1923-26).

Q. Did either you or Shirley in your presence ask him where he had gotten the jacket? A. Yes.

Q. What did he say? A. He doesn't seem to know. He just said—at first he looked down at himself like this (indicating). He said, 'Jacket?' He said, 'Where is my shirt?' Like that, as if he didn't even know he had the jacket" (1927).

Brown had gotten drunk with Stovall "a few times" (2004). In the evening of August 24th, Stovall "talked like he was high but he didn't talk like he usually talked when he got high" (2031).

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Over objection of defense counsel (2040) the white jacket was received in evidence as People's Exhibit 30 (2041).

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Dr. Frances Margaret Behrendt testified that she was a Radiologist and that she and her late husband, Dr. Paul Behrendt, resided at Pine and Clinton Streets in Garden City.

At around midnight of August 23rd her husband came into her room and awakened her (2052-53). She heard two "little thuds" coming from downstairs (2056). Her husband walked downstairs and she followed him not more than five minutes later (2057-58).

She saw her husband standing in the kitchen with a telephone receiver in his hand. Immediately nearby she saw a tall Negro with outstretched hand (2058, 2061).

Mrs. Behrendt jumped, head on, upon the intruder and was stabbed and fell to the kitchen floor (2059, 2062). The next moment she saw her husband on the floor with a broken knife lying next to him (2059). She knew her husband was dead (2059, 2062).

While she lay upon the floor, the assailant kept stabbing her in the back (2063, 2067) and threw the refrigerator over in her direction (2064).

While lying on the kitchen floor she heard the assailant walking around the room speaking rapidly but clearly in a high pitched voice (2065). The assailant was speaking about "religion" (2065).

She lay upon the floor for about fifteen or twenty minutes and heard the assailant walk about in the kitchen and dining during which time the assailant "kept on talking" but Mrs. Behrendt could not repeat what was said (2064, 2067-2069).

Mrs. Behrendt identified the defendant as the assailant (2075). She also testified, without objection, that she had seen the defendant on one other occasion, in the hospital when Stovall was accompanied by the police (2076).

Over objection (2084-85) Mrs. Behrendt testified that People's Exhibit 30 was a jacket similar to those worn by her husband (2085).

On cross-examination Mrs. Behrendt stated that after she was stabbed, the assailant kept walking back and forth and talked incessantly. He also sat down in a dining room chair (2220-24).

On the day Stovall was brought to her hospital room, she was first told "they would bring a suspect" in (2268).

Sergeant Timothy Ring of the Nassau County Police testified that while in Police Headquarters on the evening of August 24th, he noticed red stains on Stovall's shoes (2338-2340). He removed the shoes at 8:30 P.M. (2344) and turned them over to Detective Rieder of the Technical Research Bureau for examination (2343).

On cross-examination Sergeant Ring testified that he physically removed the shoes from the prisoner (2351). During the hours, between 4:30 and 8:30 P.M. when he had

the defendant under observation, he saw no bruises or marks upon the body of the prisoner (2354-56). During the early part of the interrogation of the prisoner, "he kept saying he didn't remember" (2374).

Detective Fred Catapano (testimony resumed, see supra p. 23) testified on cross-examination that he went to the defendant's home in Jamaica on August 24th and after speaking to the landlord, Charlie Rice, went to the defendant's room, was admitted by Rice and removed Exhibits I, J, and K (a shirt, pillowease and bedsheet) (Ident.). He did not have a search warrant and the defendant was not present at the time (2395-98). At the request of defense counsel the articles were impounded (2399).

After Catapano removed the articles from the defendant's room he took them to the Chinese Laundry (2416-17).

Detective Eugene Rieder of the Technical Research Bureau of the Nassau County Police testified as an expert witness that he examined Exhibit 16 (the shirt found under the refrigerator) and that it was stained with human blood of Group A (2460). Part of the front portion of the shirt was torn out (2461). Exhibit 40 (the piece of material found in the armpit of the deceased) matched the torn out portion of the shirt (2468-74) and was stained with blood of Group B (2466). Dr. Behrendt was Group B (2467).

Rieder also identified Exhibit 21, a T-shirt with the laundry mark "264" as stained with blood of Group A (2478-81).

Rieder also tested Exhibit 31, a pair of black trousers given him by Captain Hynes at 5:05 P.M. on August 24th, as bearing blood stains of Group A (2490-92). He also examined Exhibit 30, and Exhibit 35 the white jacket and the hat and found them stained with human blood, although the amount of blood was insufficient to permit identification by blood group (2496-99); (2500-2505).

Defense counsel repeated his continuing "constitutional objection" to Exhibit 31 (2493) Exhibit 30 (2499), and Exhibit 35 (2505).

The shoes taken from the defendant by Sergeant Timothy Ring were also examined and bore human blood (2507-09)

and were received in Evidence as Exhibit 46 with "no objection" (2510).

The broken knife handle and blade (Exhibits 22 and 23) were stained with blood of Group B (2519).

Without objection Detective Rieder testified that he took "fingernail scrapings" * from the defendant at 4:55 p.m. on August 24th in the Homicide Squad office in Police Headquarters (2784). All the scrapings from the ten fingers were positive for blood (2785).

Rieder also examined the clothing worn by Stovall at the time of his arrest and found it negative for blood (2786-87).

On cross-examination and after refreshing his recollection, Rieder testified that Stovall's socks were stained with blood belonging to Group A (2792-94).

At the time he took the fingernail scrapings he noticed no bruises, lacerations or contusions upon the defendant (2841-43). Rieder said nothing to the prisoner other than "the fact I was going to take fingernail scrapings."

It was also brought out upon cross-examination that Rieder had examined a pair of undershorts belonging to the defendant (2866, 2878-79, 2913) and found blood of Group A (2878).

Upon redirect examination the People put the undershorts in evidence as Exhibit 60 over the following objection:

> Mr. Castellano: . . . I have to make, I believe, a continuing objection with regard to the Mapp case. I don't know whether or not these shorts were taken from the home of the sister when they went down there. If such were, if they were taken from the body of the defendant of course there is no objection, but if they were taken from the house the objection on the constitutional ground remains, Judge." (2920-21)

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* "We take a file and we scrape out any material that is lying underneath the person's fingernails." (2781-82).

The socks were then offered in evidence and received as Exhibit 61 over "the same objection" (2922-23).

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After Detective Rieder concluded his testimony, defense counsel moved to dismiss the indictment on the ground the grand jury testimony of Rieder (Exhibit 2 for Identification) showed that blood had been taken from the defendant on August 28, 1961 . . . at a time after his arraignment (2936-39). The motion was denied.

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Rene Girodias testified that he lived at 90 Pine Street in Garden City about four houses from the corner of Clinton and Pine.

Shortly before midnight on August 23rd he heard screams and the breaking of glass (2941-42).

Later he saw a man wearing something white (2947) standing on the corner of Clinton and Pine, either yelling or screaming (2946, 2963-4).

Joseph J. McGuire testified that he was employed at the Oasis Bar and Grill at 433 Clinton Road in Hempstead.

He first saw the defendant at approximately 10:30 P.M. on August 23, 1961 (3022).

When the defendant came in he went to the telephone booth and made a call. When he finished the call he came out and said to McGuire, "How come nobody talks to me when I ask questions?" Stovall then asked McGuire for a container of coffee and asked McGuire to telephone for a taxi (3023-24). Stovall and McGuire had a dispute over whether the coffee was paid for and then Stovall went outside and got into the taxi. (3024) Stovall had forgotten his umbrella and McGuire brought it to him and said, "Here's your umbrella, Johnny" Stovall said, "Don't call me Johnny. My name is Teddy" (3024-25).

After Stovall left the telephone booth he asked how he could get to an address in Uniondale. McGuire and a "couple of fellows" tried to tell him how to get there but Stovall "was all jumbled up" (3027-28).

Before the defendant left the bar, McGuire found a slip of paper in the telephone booth that had a phone number written on it. McGuire gave the number to the police at about 8:30 A.M. on August 24th (3029-31).

About fifteen or twenty minutes after the defendant left in the taxi, McGuire saw him walking past the bar (3026, 3031).

About two hours later Stovall returned to the bar wearing a white jacket. Stovall told McGuire that he got the jacket . . . "off a day man or a dead man. I didn't know what he said." Stovall asked for a drink but McGuire refused to serve him anything but beer. Stovall drank the beer and left (3031-3033).

On cross-examination McGuire repeated that he had advised the police at 8:30 A.M. of the contents of the slip of paper found in the telephone booth and had the impression that he subsequently gave the slip of paper to the police. McGuire recalled only that there was a telephone number on the piece of paper (3036-3040).

When McGuire first saw the defendant at 10:30 P.M. on August 23rd, Stovall "seemed to be all befuddled like he might be coked up or something." He did not appear to be intoxicated (3041); "he got a little belligerent and he started rambling and all . . . he didn't seem intoxicated. There was something the matter with the man. He was either doped up or drunk, but he wasn't showing the effects of being drunk all the time" (3050).

At the time Stovall was wearing a "pork-pie" hat similar to Exhibit 35 (3057) and McGuire thought Stovall was wearing a stripped shirt (3058). When the defendant returned two hours later he was wearing a white jacket (3056) and was wearing no shirt or undershirt under the jacket (3059).

Warren Van Gelder testified that he had been a patron of the Oasis Bar on August 23rd. In substance he corroborated McGuire's testimony as to the events which took place in the bar the first time that the defendant was there (3097-3106).

John J. Kelly testified that he was in the Oasis Bar with Van Gelder when the defendant came in. His testimony was in substance the same as Van Gelder's (3109-3123). He did not think that the defendant was drunk (3111).

Jack Kartee testified that he was the general manager of Larry's Taxi in Hempstead. On August 23rd at 10:45 P.M. he received a call from the Oasis Bar for a cab and car 22, driven by James Edmondston was dispatched (3131).

James Edmondston testified that he worked for Larry's Taxi. In response to a call, he went to the Oasis Bar, arriving just before 11:00 P.M. on August 23rd (3135).

A passenger got in the cab, "but didn't know exactly where he was going" (3136) but showed Edmondston a small piece of paper on which was written an address in Uniondale, possibly on Union Drive (3137).

After driving about a block Edmondston became concerned about whether the passenger could pay the fare and he told the passenger that the fare might come to about a dollar and a half. The passenger said something like, "it's just around the corner" (3138), and got out of the cab on Meriam Street, about a block from Clinton Street (3140).

Edmondston could not "definitely" pick out a person in the courtroom as being his passenger (3147). He thought his passenger was drunk (3158-59).

Kathryn Maus testified that she was being driven home on Clinton Street at about midnight on August 23-24th. She saw a negro wearing a white coat, hat and dark trousers standing in the middle of Clinton waving his hands (3167-68).

On cross-examination she stated that the person was yelling as he waved his arms but she could not hear what was being shouted (3174-75).

She watched the person walk down the middle of Clinton Street towards the Oasis Bar (3180-83). He was "weaving" from side to side as he walked (3185-87).

Walter Girodeau testified that he resided at 757 Union Drive, Unioñdale, Long Island. He was 62 years old and was employed in various hospitals as an orderly or male nurse.

On Wednesday August 23, 1961 he went to the Hempstead railroad station to meet a friend (3195). He started to drive away when the friend did not show up and he saw Stovall standing on the sidewalk in the rain. Stovall "made a motion," Girodeau said "Yes" and Stovall came over and got in Girodeau's automobile (3197-98). Girodeau drove the defendant to his sister's house on Wellington Street. When they arrived, Girodeau refused to accept payment for the ride; the defendant went into a liquor store and returned with a bottle (3201). They sat in the car drinking and talking (3202-03) and Girodeau asked the defendant over for dinner (3203). Stovall went into his sister's house for five or ten minutes and then the two drove off to Girodeau's apartment. There they ate, had a couple of drinks and watched television (3204-05). After dinner, Girodeau drove Stovall to his sister's house and left him off at a few minutes past eight p.m. (3209).

Between 10:00 and 10:30 p.m. Girodeau received a telephone call from Stovall who asked Girodeau to drive him to Jamaica. Girodeau told Stovall that he had lent someone his automobile but if Stovall would come to Girodeau's house he would drive him as soon as the car was returned. Girodeau did not see the defendant until the night of August 24th when he was brought to Police Headquarters "to point out the person" (3211).

While Stovall was with Girodeau he wrote out his Jamaica address on a slip of paper and gave it to Girodeau, who later turned over the slip of paper to the police (3216-18).

On cross-examination Girodeau testified that he committed no sexual or immoral acts with the defendant (3258, 3260) and that he was not at Clinton Street between 10:30 and 11:00 p.m. on August 23rd (3267-70). He denied picking the defendant up at that time to drive him to Jamaica (3270) and denied removing the defendant's shirt and

T-shirt and using them to cover his head as he committed "another" immoral act upon the defendant (3271).

On the morning of August 24th Girodeau received a telephone call from a detective (3279) and was taken down to the "Detective Bureau" at about 10:00 a.m. (3280, 3285). He did not know about the killing until about 2:30 p.m. on the 24th when he heard about it over his automobile radio (3281). Girodeau was "nervous" because the radio report said that the killer had worn a white jacket and Girodeau owned six white jackets (3282-84, 3289, 3292-93).

Girodeau denied giving Stovall a white jacket which defense counsel suggested Girodeau had taken from Dr. Behrendt's house (3304-05). Girodeau denied ever being in Dr. Behrendt's home or seeing Exhibit 22, the broken knife (3324) and denied putting "anything" in Stovall's drinks (3327).

On redirect examination Girodeau was asked if he had "improper relations" with the defendant and Girodeau said "No." He was then asked:

> Q. Now, if you did have such improper relation, [sic] this defendant would be the one that would be able to say so; isn't that a fact, just yes or no?

Defense objection was sustained but a motion for a mistrial denied. The court admonished the jury that the defendant had no duty, responsibility or obligation to make a statement or testify (3378-3381).

Shirley Stovall Brown, the sister of the defendant, testified as a People's witness that on August 23rd she lived at 85 Wellington Street in Hempstead (3455).

She first saw her brother on the 23rd when he came to the house at about six p.m., stayed for five minutes and then left (3455). He returned at about eight p.m. (3456) and stayed until about 10:45 or eleven p.m. when he left to go home (3460).

Stovall came back between 12:30 and 1:00 a.m. (3461-62). When he returned he was wearing the same trousers and hat that he wore earlier in the evening; however he was

not wearing his shirt or undershirt but was wearing a white jacket (3463-64).

He had a smear of blood on his face and blood on his trousers and socks (3465-67).

When the defendant came back, "he looked dizzy to me" (3462), "he looked drowsy and sleepy. He looked as if he was in a daze" (3463); ". . . he looked as if he was drinking and he was drunk and he looked dopey to me. I mean he looked as if he was just in a trance or daze or something. I never seen him look like that before." (3465)

She tried to find out from the defendant what had happened:

> "But I did talk trying to get out of him where he got the blood from and he was just telling me it was all like a dream. I couldn't figure out how a person could have a dream with blood on him. It was just like a dream. He saw this blood and this man lying in the blood and he heard this women cry and he ran in to help. He thought it was me and he ran in the house when he heard her cry. He thought that he'd go in and see what was wrong with me. And he went in and he saw this man on the floor in this blood and he slipped in it and the women came from nowhere and tried to hurt him. He said he bent on his knees and tried to pray for her and told her he only came to help, he didn't come to hurt her, that if he prayed that God wouldn't let her hurt him, that he would get out, he would go out and if she didn't want him to help he would go out about his business. So when he prayed for her he fell on the floor and he left out, and he constantly say it was just like a dream, it was just like a dream. So I asked him what kind of a dream, where did he get the blood from. So he said he slipped in it 'When the lady came and tried to kill me! (3471-73) * * * I figured he was so drunk that he just didn't know what he was talking about" (3474).

The next day Shirley questioned her brother again and he said:

> "No, there was no fight. I didn't see no fight. I only heard this women cry" and he went in to help her, "and I saw this blood lying on the floor and this man was there, and when I got in there this women came out of nowhere trying to kill me," and he slipped on the floor trying to help her, and she tried to kill him and he prayed for her and she fell and he walked out (3476).

The sister then took the defendant walking down Clinton Street to see where it was that Stovall had the "fight" the night before (3476-80). They were unable to find the house (3479) even though they passed the Behrendt house (3499-3504) which was only two blocks away from Shirley Brown's house on Wellington Street (3499).

On cross-examination the defendant's sister testified that Stovall had told her that he had met a man who was going to pay him to have homosexual relations with him (3545-46).

Michael Wowk testified that he was an official court reporter for Nassau County and that he stenographically recorded the interrogation of Theodore Stovall by District Attorney William Cahn beginning at 9:46 p.m. on August 24, 1961 (3630).

The transcript was read to the jury and admitted into evidence as Exhibit 67 with "no objection" (3633). The statement appears at folios 4732-4776 of volume III of the printed Record on Appeal.

On cross-examination Wowk testified that the typed statement reflected everything that transpired in his presence and that he saw nothing that transpired prior to 9:46 p.m. relative to the interrogation of Mr. Stovall (3645-46).

* * * * *

The People rested

* * * * *

Defense counsel renewed the motion for a mistrial based upon the prosecutor's question to Girodeau concerning whether the defendant would be "able to say" whether there had been improper relations between them. (3651-55; supra p. 40). The motion was denied.

A motion to dismiss the indictment on the grounds that it was based on hearsay, ". . . and upon all other incompetent and illegal evidence that appears from the grand jury minutes of Detective Stalter's, Detective Rofheart's and the other [grandjury] witnesses" was also denied (3656).

Defense counsel again moved to suppress the evidence seized from the defendant's home in Jamaica (3657-59) and further moved to suppress evidence thereafter obtained as the result of the illegal taking in Jamaica (3660-62).

The Court denied the motion stating: "I do not feel that there is any evidence in this case before the jury which either directly or indirectly flows from any illegal search and seizure that might have been committed by the authorities who were handling the investigation" (3662-63).

Defense counsel renewed his motion to suppress the trousers, shoes, hat, and socks of the defendant taken during the Hempstead search on the grounds that these items were not contraband or fruits of crime and were merely evidentiary. Items taken from the *person* of the defendant were specifically excluded from this application (3663-3682). The motion was denied.

A motion for a directed verdict of acquittal on Count I (felony murder) was denied (3683-85). A similar motion addressed to Count II (common law murder) was made (3685-3718) and denied after the defense rested (3987).

The Defense

Melvin Gaddy testified that he owned the premises at 85 Wellington Street in Hempstead.

He saw the defendant at about 4:30 or 5:00 p.m. on August 23rd sitting in an automobile in front of his house

(3723-24). There was another person in the car whom he could not identify (3726-27).

Later that night, or in the early morning of August 24th (3731) he responded to the defendant's knocking on the door and let him into the house (3732-33).

He asked Stovall if it was raining outside but he could not make out the defendant's answers (3734).

Stovall "... did look rather strange, out of the ordinary, out of the Theodore that I really knew. He did look strange" (3735) "... He seemed to not know where he was going or what he was doing. And his speech was mumbly. And at all other times I could understand him clearly" (3737-38).

> Q. In your opinion, were his actions those of an irrational person?
>
> A. I think so, yes.

On cross-examination Gaddy testified that he had refused to sign a statement for the police when previously requested (3740-43).

He had seen the defendant on two or three occasions prior to August 23 (3751).

When he let the defendant into the house late on August 23-24th, he noticed that the defendant's "shirt top piece" was white (3752). He didn't notice any blood on the defendant's clothing but he did notice blood or a spot on his right temple (3752-53).

Deputy Chief Inspector John Lada was recalled as a defense witness.

He brought the defendant to police headquarters, arriving at 4:45 p.m. on August 24th (3764). Prior to interrogation, the prisoner's fingernails were scraped by Detective Rieder and his fingerprints and palm prints were taken (3765).

During the five hours between 4:45 and the "Q. and A." which was taken at 9:45 p.m., Lada questioned Stovall for an hour or an hour and a half (3766) and was present with the defendant for two and one-half or three hours (3768).

He was also present during the "Q. and A." statement and in substance Exhibit 67 conforms to his recollection of what transpired (3769-71).

During the time that the defendant was in his presence Stovall was not "touched" by any officer with a view towards injuring him (3772-73). When the prisoner's undershirt was removed, Lada saw no marks or bruises (3773-74).

During the interrogation the prisoner was "absolutely rational" (3776).

A psychiatrist was called to Police Headquarters and examined the prisoner at about midnight on August 24-25th. He was called by District Attorney Cahn as part of "regular procedure." The prisoner was examined by the psychiatrist in Lada's office (3778-83).

On cross-examination Lada stated that it is "routine" to have a psychiatrist examine defendants in first degree murder cases (3801-02).

* * * * *

The defense rested and moved to dismiss the indictment on the ground that the People failed to prove his guilt beyond a reasonable doubt and "on each and very ground provided for in the Code of Criminal Procedure." The motions were denied and exceptions granted (3805).

People's Rebuttal

Ernani D'Angelo testified that he was a psychiatrist with "about the highest rating you can receive" (3813). He thought he examined the defendant on February 17th (3813); he thought again, and decided it was January 17 (3814); he examined his report and decided he saw the defendant on January 18th (3814). After it was called to Dr. D'Angelo's attention that January 18th was the date of his report, the Doctor reflected and concluded that he had begun his examination of the defendant at 11:55 p.m. on August 24, 1961 (3815).

The doctor was then asked an "hypothetical question," from folio 3816 for a dozen or so pages, at the conclusion of which the doctor opined:

> "I state that the defendant knew the nature and quality of his act and that he knew it was wrong" (3861)*

and that the defendant "had the capacity to premeditate, deliberate and intend to kill Dr. Behrendt" (3861-62).

The doctor further testified:

> "... in a general way I can state that I can see nothing in the patient's behavior from the time he came into Hempstead throughout that evening or even the next day which would indicate that any time he was out of contact or irrational in his behavior" (3862-63).

Repeated objections were taken to the doctor's testimony on the grounds that the hypothetical question was incomplete and improper as to form (3841-3861; 3863-64) and on the ground that the entire testimony was improper rebuttal since the defendant had not raised an issue relating to his sanity (3865-3914).

During the course of the colloquy concerning D'Angelo's testimony the District Attorney offered to have the doctor's testimony stricken if counsel or the defense would stipulate that no question of insanity was present in the case (3885). Defense counsel refused to so stipulate stating that the basis for the defense was:

> "My theory in this case is that Girideau committed this crime. He drugged this man [Stovall]. He placed his garments in there. He [Girideau] did all these things actually to cover his own crime. This man [Stovall] is not insane." (3889)

The defense attorneys maintained that they had not raised a defense of insanity, however when pressed by the Court as to whether they would enter into the stipulation sug-

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* Through typographical error the folio numbers at p. 1287 of the printed record (Volume II) are listed as "5938, 6038 and 6138." It should be "3859, 3860, 3861."

gested by the Prosecutor, counsel declined stating that the jurors still had the right to ask themselves, "Could this guy go nuts and nobody else knows [sic] about it?" (3893) The Court overruled the defense objections.

The direct examination of the doctor resumed and he was asked to again answer the hypothetical question based on the facts stated in the question and "your observation of the defendant, and without reference to anything the defendant may have told you in the interview." (3915) The doctor stated "definitely" that

> "My opinion is that he knew the nature and quality of the act and that he knew it was wrong. He at no time, as I have mentioned before, was he out of contact and he always was aware of what he was doing.
>
> Q. Now at the time of the alleged killing of Dr. Behrendt which I have asked you to assume from the facts, can you state on the basis of this assumed state of facts and your observations of this man, without referring to anything he might have told you, whether or not he had the capacity in your opinion to premeditate, deliberate and intend to kill Dr. Behrendt? A. He did.
>
> Q. And what do you base that on? A. On the fact that he did exactly what he intended to do, to kill Dr. Behrendt" (3916-18).

Objections and motions to strike were overruled and a motion for a mistrial was denied (3918-19). The doctor was then asked:

> Q. You are basing your opinion merely on an assumed state of facts as I have given them to you, is that correct? A. That's exactly it. (3920).

Both sides rested.

After summing up on isolated bits of evidence defense counsel argued to the jury concerning Girodeau's involvement:

"Is there anybody on this jury that isn't convinced beyond a reasonable doubt that this character is as queer as a three dollar bill. * * * Where a witness testifies and you find that he lies with regard to any one point. . . . you are entitled to disbelieve his entire testimony * * * And I'll show you where Gerodeau lies. (4038-39)

"Gerodeau is the guy who says, 'I was afraid because I got six white jackets' . . . but he's afraid because he got six white jackets or five white jackets. He's not afraid because he knows Stovall is involved, the fellow he's been with the night before. He says to the police in the statement he gives them and he says here, 'The last time I heard from Stovall was he called me around 10, 10:30'

* * * * *

"That's the last time he saw of Stovall. Why does he say this? Because if he saw more of Stovall after that time he's right close up to the time of the commission of the murder. I don't know whether he did it or not. But he's a better suspect than this guy is . . . (4041)

". . . And then later the bartender made a call and called a taxicab. Now when did our friend Mr. Gerodeau receive this telephone call? That lying pervert never got that call because he couldn't. He wasn't home. He was right in the vicinity waiting, for Stovall near his sister's house. (4042)

* * * * *

"What is he* doing in this queer's house for five years? Is he the guy that needs the dope? This is what I think. I think that Gerodeau has been clipping and stealing dope on his job wherever he could. I wouldn't be surprised if Gerodeau knew Dr. Behrendt (4044-45)

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* It has been brought out at trial that a boarder had been living at Gerodeau's house for five years.

"At any rate, Gerodeau was with this defendant throughout the whole evening outside of the time he dropped him off at his sister's house, and when I asked him about the blow jobs he denied it. But that's exactly what happened. He got this man's shirt and T-shirt off his back on that pretext and he did this job, this pervert with the high pitched voice who went to college, who finished high school, who speaks clearly and distinctly in as high a pitched voice as you want, and maybe a queer hasn't got the strength to do this. This queer has been working for ten years in psychiatric wards * * * They [the police] didn't do anything about checking Gerodeau. (4044-46)

Counsel continued in this vein and then referred to the fact that in Stovall's statement,

"There is not one admission in there. There are 15 or so of the 22 pages of Mr. Cahn saying, 'You're a liar. Why don't you tell the truth?'" (4058)

Mr. Castellano then stated that he tried to show that the defendant had been drunk or drugged but that he had not presented an insanity defense, although he could have had "... four psychiatrists here. They don't cost a dime. The state pays for it" (4061).

Counsel finally argued, assuming Stovall killed the deceased, that there was no premeditation, deliberation or intent (4071-73).

On the People's summation Assistant District Attorney Spitzer discussed the evidence in the case, including reference to the fact that the defendant's statement to District Attorney Cahn (Exhibit 67) was inconsistent with evidence adduced at trial and also that the defendant's statement did not support defense counsel Castellano's theory of the murder (4152-65; 4168-75).

The Charge

Judge Kelly submitted to the jury the three counts of the indictment: common law murder, felony murder and attempted murder of Mrs. Behrendt.

He then marshalled the evidence including:

> "He [Detective Rofheart] stated that, 'When we got in the [hospital] room Inspector Pinnell asked Mrs. Behrendt if this was the man. She said, 'Positively that's the man. He struck down my husband and attacked me.'"
>
> "The defendant was also told to speak, which he did, because of voice identification," said Detective Rofheart. "She said she had heard him speak the night in question or the night of the murder" (4266-67).

After marshalling the evidence Judge Kelly charged as to the law on the counts of the indictment, adding the lesser included crimes of murder in the second degree and misdemeanor manslaughter (4363-70).

The jury was charged to consider "mental stress" and consumption of alcohol as bearing upon the "capacity to think" and form the specific intent necessary for murder in the first degree (4360-61, 4371-75, 4381).

The Court then specifically charged the jury on insanity as a defense to the crimes charged (4388-95), including a specific reference to Dr. D'Angelo's opinion concerning the defendant's capacity (4393).

The Court, in marshalling the evidence referred to the testimony of Mr. Wowk (the stenographer), "who testified as to the authenticity of the statement that he had taken from Mr. Stovall" (4322) in which the defendant admitted that the torn shirt and keys were his but denied any knowledge of the crime (4323). No charge was given relating to the voluntariness of the statement.

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Defendant's Requests to Charge, Numbers 10 (f. 4419) and 15 (4421) dealt with intoxication as a defense to those elements requiring specific intent. No requests were made on the subjects of insanity or coerced admissions and statements.

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The jury commenced its deliberation at 2:52 p.m. and returned at 5:17 with a request to see two photographs of the scene and to have Mrs. Behrendt's testimony read (4431). The reading was completed at 7:20 p.m. when the jury went to dinner. At twenty minutes past midnight the jury retired for the night, resuming deliberation at 9:10 a.m. At 12:48 p.m. the jury returned and requested a reading of the indictment and "definitions" of the crimes (4437-49). The jury returned to the jury room at 1:12 p.m. and came back to the courtroom at 4:10 p.m. (4450) to request the "complete charge" on the felony murder count, including intoxication (4450-57). The jury retired at 4:35 p.m. and returned at 9:20 p.m. to request a rereading of the charge on Count II (common law murder) (4461-71). The jury retired at 9:35 p.m. and returned at 10:00 p.m. with the following verdicts:

> Count I (felony murder): guilty as charged;
>
> Count II (common law): guilty of murder in the second degree;
>
> Count III (Attempted murder in the first degree): guilty as charged.

The jury made no recommendation for mercy on Count I.

On the day of sentence defense counsel moved pursuant to Section 481 of the Code of Criminal Procedure to have the defendant examined to determine his sanity (4500). Counsel stated that the defendant had never been examined by a psychiatrist other than D'Angelo (4500-04) and that the Warden of the County Jail had advised counsel that "'. . . this defendant has not acted in any wise such as a

defendant who was convicted of murder in the first degree. He talks to no one. He stays completely by himself. He is constantly reading the Bible. He makes no outward display of any kind" (4514). The Court ordered the examination.

On September 6, 1962 the defendant appeared in Court and portions of a psychiatric report were read into the record. The report apparently indicated only that the defendant, at the time of the trial, was capable of understanding the charges and preparing his defense (4532-45).

The defendant was then sentenced to death on Count I, forty years to life on Count II and a consecutive sentence of twelve and one-half to twenty-five years on Count III (4545-51).

The Appeal

Upon appeal the defendant was reassigned the same attorneys who were assigned to represent him at trial.

Appellant's Brief, Point I (pp. 3-15) argued that the evidence was insufficient to justify the verdicts on the three counts.

Point II (pp. 16-24), that "the evidence did not justify the finding that the defendant was able to formulate the required specific intent." Counsel argued that the defendant was "intoxicated to a degree that left him stunned, disoriented and mentally helpless" (Brief, p. 24).

In Point III (Brief, pp. 25-34) Appellant argued that the trial court erred in its ruling that the "poison fruit" rule did not apply to New York and urged that the items seized at the time of the defendant's arrest in Hempstead, and introduced into evidence by the People, were tainted by the initial unlawful search and seizure in Jamaica. Counsel also argued that the hat and trousers seized in Hempstead were neither the fruits or instrumentalities of crime and, as "merely evidentiary" matter were inadmissible.

Appellant's Point IV (Brief, pp. 34-37) argues:

"After arraignment the defendant was taken to the hospital to be identified by the victim's wife and he was then and there made to speak under circumstances amounting to testimonial compulsion. * * * What transpired at the hospital was after the defendant had been arraigned . . . and while the defendant was without counsel * * * "

Appellant's Point V (Brief, pp. 37-42) contended that it was error to allow the People to put on rebuttal evidence "as to the defendant's sanity although the defense never raised that issue." Counsel argued that:

". . . from beginning to end, the theory of defense was: that if the defendant committed the crimes charged, he was so intoxicated or drugged . . . as to be unable to formulate a criminal intent" (Brief, p. 37)

and that since the defendant had not rebutted, or attempted to rebut the presumption of sanity it was error to allow Dr. D'Angelo's testimony. Counsel argued that the defendant was prejudiced by D'Angelo's testimony because:

"This unprovoked, unanticipated and eleventh hour stratagem on the part of the People, threw the defense completely off balance; moreover it unjustifiedly permitted the People to bolster and fortify the presumption of sanity to the detriment of the defendant" (Brief, p. 42)

Points VI (Brief, pp. 42-49) and VII (Brief, pp. 49-53) dealt with alleged errors in the Court's charge and improper questioning of witnesses.

The People's Brief

The People's Brief, Point I (pp. 37-41) argued that the evidence was sufficient to sustain the conviction on all counts and the defendant was not so intoxicated so as to negate the intent necessary to support the verdicts.

In Point II (pp. 41-47) the People conceded that the Jamaica search was unlawful (p. 47) and that the ruling relative to the non-applicability of the "prison fruits" rule was erroneous (pp. 43-44). The People argued however that:

1. The defendant failed to meet *his* burden of proof in showing that the Hempstead arrest and incidental search flowed directly from the evidence and information gathered in Jamaica (p. 42).

2. On the basis of the trial record—as distinguished from the hearing on the motion to suppress—Detective Rofheart was supposed to have learned Stovall's identity and address from the bartender, McGuire, and Girodeau prior to the arrest (p. 45). The People conceded that the record was silent on the subject of how and when the police learned that the keys found at the scene of the killing matched the locker assigned to Stovall at Abraham and Straus.

3. The People suggested that the appeal be held in abeyance and the case returned to the trial court for a further hearing with regard to the latter point if necessary (p. 46).

Points III and IV of the People's Brief dealt with the other points raised by Stovall's counsel.